STATE OF MICHIGAN

COURT OF APPEALS

WARREN W. MILLS,

Plaintiff-Appellant,

v

DAVID HEINONEN and MAUREEN HEINONEN,

Defendants-Appellees.

UNPUBLISHED
October 19, 2001

No. 229923
Alger Circuit Court
LC No. 99-003378-CH

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment quieting title to a strip of land in favor of defendants. We reverse.

Plaintiff purchased a piece of land adjacent to the disputed strip from Vernon Richardson in 1939 or 1940. Richardson allegedly orally granted an easement over this strip to plaintiff, who then cleared a road over it to access both the original parcel and other nearby parcels he purchased later. However, the purported easement grant was never written or recorded. In 1988, plaintiff began selling parcels of his land, one of which he sold to defendants. Plaintiff orally informed defendants that they could use the disputed strip to access the property. After defendants discovered that they had no legal access to their property, they purchased the disputed strip at a tax sale and began refusing access across the strip to certain of plaintiff's successors in interest. Plaintiff sued to enjoin defendants from interfering with his purchasers' easement rights in the strip. The trial court held that plaintiff had failed to establish the existence of an easement.

On appeal, plaintiff argues that he acquired a prescriptive easement over the disputed strip. We agree. The trial court found that the easement was sufficiently visible to satisfy the requirement that the use be "open"; however, the lower court concluded that plaintiff's use was permissive and, therefore, it could not ripen into a prescriptive easement. The trial court's holdings in equitable actions are reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). We review the trial court's findings of fact for clear error, *Grand Rapids v Green*, 187 Mich App 131, 135-136; 466 NW2d 388 (1991), and its conclusions of law de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

An easement by prescription is created by a use of the servient estate that is open, notorious, adverse, and continuous for a period of fifteen years. *Killips v Mannisto*, 244 Mich

App 256; 624 NW2d 224 (2001). Undisputed facts on the record establish that plaintiff's use was notorious and continuous for over fifteen years. On appeal, the only disputed elements are whether plaintiff's use was open and whether it was adverse.

The trial court's finding that plaintiff's use was sufficiently open to give defendants notice was not clearly erroneous. There was adequate evidence on the record, including defendant's own testimony, to establish that a road was visible at the time defendant purchased his property, and that defendant was aware of plaintiff's use. This sufficed to give defendant actual notice that a third party's rights may be involved. *Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995). Having reviewed the entire record, this Court is not left with the definite and firm conviction that the trial court committed a mistake regarding whether plaintiff's use was open. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

We disagree, however, with the trial court's conclusion that a permissive use may never ripen into a prescriptive easement. Where a landowner intends to grant an easement, but does so only orally, the fact that the agreement was not reduced to writing will not prevent the use from ripening into an easement, in spite of the fact that the use is permissive. *Outhwaite v Foote*, 240 Mich 327, 331-332; 215 NW 331 (1927); *Plymouth Canton Community Crier v Prose*, 242 Mich App 676, 684-685; 619 NW2d 725 (2000); see also *Cook v Grand River Hydroelectric Power Co, Inc*, 131 Mich App 821, 826; 346 NW2d 881 (1984) (use of a servient estate under a legally ineffective conveyance is adverse, not permissive). Because facts on the record establish that plaintiff's use was open, notorious, adverse, and continuous for over fifteen years, we hold that plaintiff has established an easement by prescription.

The next issue is whether plaintiff's easement rights were cut off by defendant's tax sale purchase of the disputed strip. MCL 211.67b(2) provides in part: "Notwithstanding any other provision of law, any land sold for taxes shall remain subject to any visible or recorded easement . . . " Plaintiff's easement was not recorded, but the trial court held that had plaintiff proved an easement, it would have been visible under the terms of the statute. The trial court's factual finding is reviewed for clear error, *Green*, *supra* at 135-136, and the interpretation of the statutory term "visible" is reviewed de novo. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

The primary goal of statutory interpretation is to determine and effectuate the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The Legislature is presumed to have intended the meaning it plainly expressed. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Id.*

The word "visible" is defined as "perceptible, discernible, clear, distinct, evident, open, conspicuous." Black's Law Dictionary (6th ed). Defendants suggest that a "visible easement" is one in which it is clear which specific parcel or parcels benefit from the easement. However, this reading requires that the extent or scope, rather than simply the existence, of an easement be visible to come under the protection of the statute. This limited construction departs from the plain meaning of the word "visible," and we do not construe statutory language where the plain meaning is clear. *Sun Valley*, *supra* at 236. Because defendant's testimony established that the

road plaintiff had cleared over the easement was visible, plaintiff's easement was preserved under MCL 211.67b(2).

Finally, defendants argue that plaintiff's use has overburdened the easement. Because plaintiff's easement was intended to benefit all lands appurtenant to the easement rather than the plaintiff personally, the use by the current owners of the appurtenant parcels is within the scope of the easement as originally contemplated by the parties and does not constitute an overburden. *Barbaresos v Casaszar*, 325 Mich 1, 8; 37 NW2d 689 (1949); *Walker v Bennett*, 111 Mich App 40, 44; 315 NW2d 142 (1981).

Reversed. In view of our disposition, we need not address plaintiff's remaining issue.

/s/ Richard Allen Griffin
/s/ Jane E. Markey
/s/ Patrick M. Meter